

TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

MINUTES OF BOARD MEETING

AUGUST 8, 2006

President Danny Cook called the meeting to order at 10:04 A.M. in Conference Room 160, Davy Crockett Tower, Nashville, Tennessee.

Board members present were Danny Cook, President, Ralph Buckner, Vice President, Bob Foster, David Murphy, Stephen Murphy and Nancy Vincent. Board member Wendy Hellum was absent.

Staff members present were Robert B. Gribble, Executive Director, Lauren L. Kitchell, Staff Attorney and Sandra Cooper and Jimmy Gossett, Administrative Assistants.

APPROVAL OF MINUTES:

A motion was made by Mr. Steve Murphy to approve the minutes of the June 6, 2006 Board Meeting.

Seconded by Mr. Buckner

Adopted by voice vote

FOREST HILL FUNERAL HOME:

Board President Danny Cook announced to those in attendance that the situation concerning Forest Hill Funeral Home would not be addressed by the Board during the meeting. He stated the meeting would be conducted as usual and afterward, representatives from the Commissioner's Office, the Legal Section, a Board member, and staff members will be available to meet with interested parties and answer their questions.

LEGAL REPORT:

LAUREN L. KITCHELL, STAFF ATTORNEY

Complaint Review –

1. Case No.: L06-FUN-RBS-2006020851

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH

to file death certificates was 25.5 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 3% most untimely for filing in all of Tennessee.

FD disagrees with both the methodology and spirit of this complaint, and requests that the board summarily dismiss this complaint. They respond that in most cases it is the doctor or the medical examiner that delays the filing of the death certificate. They respond that this unwarranted complaint is logically flawed and is unable to stand on its own merit.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

2. Case No.: L06-FUN-RBS-2006020951

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 36.3 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 1% most untimely for filing in all of Tennessee.

FD responds that of the nine cases that he handled in 2005, they only had one death certificate filed late because of the physician being out of town. They state that they have never received a complaint from a family or the Office of Vital Statistics.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

3. Case No.: L06-FUN-RBS-2006020861

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH

to file death certificates was 25.6 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 3% most untimely for filing in all of Tennessee.

FH responds that this FD is no longer the manager of this FH and they respond that they will try to get the death certificates in a timely manner but that it is very difficult to do in some cases.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

4. Case No.: L06-FUN-RBS-2006020881

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 26 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 3% most untimely for filing in all of Tennessee.

FD responds that they make every effort to obtain death certificates in a timely manner. They respond that often the doctor is out of town or that there are other causes for the delay in filing.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

5. Case No.: L06-FUN-RBS-2006020921

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 31 days after death. (Tennessee law, Tenn. Code

Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 2% most untimely for filing in all of Tennessee.

FD responds that they are sincerely sorry for the late filings but they discuss a lot of extenuating circumstances involved in the process. They respond that often the doctor is responsible for the delay or that there are other causes for the delay in filing. They do not feel that the entire burden of getting the death certificate signed should fall on the funeral director.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

6. Case No.: L06-FUN-RBS-2006020771

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for being "grossly late in sending the death certificate for deceased, DOD: February 19, 2006, despite several entreaties by an official of this office." On May 15, 2006, the office called the FD to check on the status of the certificate and the FD states that they had not yet sent it to the certifier.

FD responds that there are circumstances beyond their control that make them appear negligent in the performance of their duties. They state that this person was an indigent person and that no paperwork accompanied him to the funeral home. When initial contact was made with the family they had no immediate knowledge of the circumstances of death or the location of death (TN or GA) or other information necessary to fully complete the death certificate. As the result of the frustration, this file was set aside and must have fallen through the cracks. When they received the phone call from the office they immediately sent it to the certifying physician. They apologize to the Board and the Office of Vital Records for this oversight.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

7. Case No.: L06-FUN-RBS-2006020781

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 31.2 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 2% most untimely for filing in all of Tennessee.

FD refutes this charge and state they make every effort to have the certificates in the mail within 24 hours. They state that in many cases it is the doctor's fault and not their own for the late filing.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

8. Case No.: L06-FUN-RBS-2006020871

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 25.7 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 3% most untimely for filing in all of Tennessee.

FD responds that this complaint is unfair, unreasonable and untrue. They feel that it is unfair because they have no control or power to force a physician or medical examiner to sign death certificates within a specific amount of time. The FD then lists every thing he does to ensure that the death certificates are filed within a timely manner. A physician, who acted as a coroner in the area, sent in a letter for the FD stating that the FD is tireless in his pursuit of getting the death certificates completed in a timely manner.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

9. Case No.: L05-FUN-RBS-2006020941

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 35.4 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 1% most untimely for filing in all of Tennessee.

FD responds that there are many times when it is difficult to receive death certificates from the doctors. They have contacted the health department to try to resolve some of the problems they are having. They state that it is not their entire fault but they are now trying to do a better job.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

10. Case No.: L06-FUN-RBS-2006020911

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 27.6 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 2% most untimely for filing in all of Tennessee.

FD responds that the complaint is an attack on their FH and their reputation and it is outrageous. They respond that they have a lot of problems with doctors and other situations, and it is not their entire fault. The FD states they have never had a complaint from anyone before this concerning a death certificate.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

11. Case No.: L06-FUN-RBS-2006020821

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 34.8 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 2% most untimely for filing in all of Tennessee.

After two requests, there has been no response.

Complaint History: 2005 - failure to pay re-inspection fee

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

12. Case No.: L06-FUN-RBS-2006020811

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 37.3 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 1% most untimely for filing in all of Tennessee.

After two requests, there has been no response.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

13. Case No.: L06-FUN-RBS-2006020891

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH

to file death certificates was 26.8 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 2% most untimely for filing in all of Tennessee.

FD responds that they have no control over when doctors sign death certificates. They feel that this complaint is improper, unjust and unfair and has no merit whatsoever. They also state that they have never received a complaint from any of the families they serve regarding death certificates.

Tennessee Department of Health's Office of Vital Records requests that the complaint be withdrawn.

Complaint History: None

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

14. Case No.: L06-FUN-RBS-2006020931

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 31 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 2% most untimely for filing in all of Tennessee.

FD responds that they have been in contact with the Complainant. They respond that they, as an embalming service, do not file all of the death certificates for all of the FH's but they have been linked to them regarding days taken to file.

Tennessee Department of Health's Office of Vital Records requests that the complaint be withdrawn.

Complaint History: None

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

15. Case No.: L06-FUN-RBS-2006020831

Tennessee Department of Health's Office of Vital Records filed complaint against Respondent funeral director, as manager for FH, for "consistently exhibiting gross negligence in filing death certificates." In 2005, the average time it took FH to file death certificates was 25.1 days after death. (Tennessee law, Tenn. Code Ann. § 68-3-502(a)(1), requires the death certificate to be filed within five days after death.) The FH is in the 3% most untimely for filing in all of Tennessee.

FD responds that they have complained to the physicians and the county register. They state that their hands are tied and they can't do anything until they get the signature and cause of death from the physician or medical examiner.

Tennessee Department of Health's Office of Vital Records requests that the complaint be withdrawn.

Complaint History: None

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to dismiss complaint.

Seconded by Mr. David Murphy

Adopted by voice vote

16. Case No.: L06-FUN-RBS-2006022351

Complaint is the result of an inspector's notice of violation which alleges: a copy of the cremation authorization is not being retained at the FH. A FD told the inspector that the authorization is sent to the crematory with the body. The inspector also noted an FTC violation, deficiency on the GPL, the FH is charging for other preparation of the body which includes washing and disinfecting which is part of embalming and should not be charged.

FH promptly sent in a copy of the new corrected GPL and apologizes for the oversight stating that it was a printing error. The FH states that the file that was reviewed was still an active case as the cremains were received just the day before the inspection. They state that after all of the documents are signed by the authorizing agent the copies are distributed to each person and a copy is enclosed in the file. The FH responds that all of the FD's have been briefed on these laws and they intend to fully comply.

Complaint History: 2005 - \$1250 civil penalty (permanent ID not on body, FTC violation, cremation authorization did not contain telephone number of the crematory used)

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

17. Case No.: L06-FUN-RBS-2006022321

Complaint is the result of an inspector's notice of violation which alleges: FTC violation, including a deficiency on the GPL, the FH is charging for other preparation of the body which includes washing and disinfecting which is part of embalming and should not be charged.

FH sent in a copy of the corrected GPL and apologizes for the oversight stating that it was a printing error.

Complaint History: 2005 - \$2000 civil penalty (body not ready for viewing, body at the wrong chapel, flowers not delivered), 2005 - \$1250 civil penalty (permanent ID not on body, FTC violation, cremation authorization did not contain telephone number of the crematory used)

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

18. Case No.: L06-FUN-RBS-2006022371

Complaint is the result of an inspector's notice of violation which alleges: FTC violations, including deficiencies on the GPL and CPL.

FH promptly sent in a copy of the corrected GPL and CPL.

Complaint History: None

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

19. Case No.: L06-FUN-RBS-2006024871

Complaint is the result of an inspector's notice of violation which alleges: the required permanent ID device was not affixed to a body being transported to a satellite chapel.

FH responds that all staff has been reminded to diligently comply with the requirement to attach ID devices to all bodies. They believe this was a single isolated event and every effort is being made to ensure that it will not be repeated.

Complaint History: 2005 - \$750 civil penalty (FTC violations)

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

20. Case No.: L06-FUN-RBS-2006024891

Complaint is the result of an inspector's notice of violation which alleges: the required permanent ID device was not affixed to a body in the chapel. The left side of the ventilation exhaust fan was not working properly. The inspector also noted an FTC violation on the OBCPL.

FH responds that all staff has been reminded to diligently comply with the requirement to attach ID devices to all bodies. The FH responds that the fan in question has been repaired and is now fully functional such that proper ventilation has been restored. FH promptly sent in a copy of the corrected OBCPL.

Complaint History: None

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a formal hearing.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

21. Case No.: L06-FUN-RBS-2006016521

Complaint is the result of an inspector's notice of violation which alleges: an FTC violation, including a deficiency on the GPL.

FH sent in a copy of the corrected GPL.

Complaint History: None

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. Buckner to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

22. Case No.: L06-FUN-RBS-2006019951

Complaint is the result of an inspector's notice of violation which alleges: the inspector arrived at the facility to conduct a re-inspection and it was closed.

FH moved to a new location. FH sent in a change of location application, fee, and copy of the new lease and pictures of the inside of the new building.

Complaint History: 2002 - \$100 civil penalty (advertising); 2005 - \$1,000 civil penalty (establishment closed); 2006 - \$1,250 (establishment closed); 2006 - \$1,000 (establishment closed).

Recommendation: Letter of Warning

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

23. Case No.: L06-FUN-RBS-2006020171

Complainant alleges that the Respondent FH is using illegal documents to bury dead bodies on private property. He alleges that the FH, the sheriff's department and the families are entering into a conspiracy of murder, arson and brutal cold blooded acts of terrorism against him in order to cover up their illegal deeds and documents.

FH denies any illegal acts and states that this cemetery is a family burial ground and they have only buried family members there at their request.

Complaint History: 2005 - \$1500 civil penalty (unlicensed conduct); 2006 - \$750 civil penalty (embalmer's license not available for inspection, advertisement violation)

Recommendation: Dismiss

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

24. Case No.: L06-FUN-RBS-2006022401

Complainant alleges that the Respondent FH treated her very badly when her husband died. She is extremely dissatisfied and unhappy about the way she was treated by the FD at the FH. She alleges that she was not consulted about her husband's funeral arrangements and that the FD only listened to her step-daughter. She alleges that she paid for the funeral and she should have been the one to make arrangements. She also alleges that she did not get the guest book or a copy of the death certificate because they gave it to her step-daughter.

FH responds that it in no way treated the complainant badly. The FH responds that the complainant was with the other family members, including the step-daughter, throughout the whole selection process and was in no way left out or treated unkindly. The FH responds that this is a family dispute because after the funeral the complainant and the step-daughter exchanged words and the complainant told the FH that she wanted nothing to do with this and that she was not going to pay for the funeral. The FH has been paid in full following a claim in probate court. The FH has made the guest book available for pickup by the complainant but she has not responded to them.

Complaint History: None

Recommendation: Dismiss

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation

Seconded by Ms. Vincent

Adopted by voice vote

25. Case No.: L06-FUN-RBS-2006020571

Complainant alleges that the FD's at the Respondent FH treated her rudely and were unprofessional. The complainant's grandfather died and before he died he let the family know that he had a preneed policy with the Respondent FH. When they went to make arrangements for the funeral, the complainant alleges that the

FD asked them if they had a budget in mind. The complainant alleges that they told the FD about the policy but they told them they had no record of that. When they were presented with the final bill they were responsible for \$1,533.00, they told the FD that their grandfather had a bank account. They allege that the FD told them to go to the bank with the bill and the bank would issue a check. At the bank they were told that it would take 30 days, when they told this to the FD, the complainants allege that they become very rude and demanded that the bill be paid 24 hours before the funeral.

FH responds that they met with the family to make arrangements and the family told them that the deceased had a burial policy, but that they did not have the policy, payment book or any information to verify this. Then, they explained what an old burial policy would cover. The family then asked if they could go look for the policy and said they would come back. The FD states that they waited until they got back and the complainant found an insurance policy for \$1,000 but still could not find the burial policy. The FD states that they told the complainants that they would still provide them with a discount for the burial policy. This is when the FD states that they started to make arrangements and they went over prices on the GPL with the complainant. After the goods and services were picked out, the FD told them that the funeral would have to be paid for two days prior to the viewing as stated on the bill. Then they respond that they had a lengthy discussion on bank policies and funeral bills. The FD states that they told the complainant that each bank is different and that the family would have to deal with the bank. They deny being rude or unprofessional and state that they explained everything to the family and the complainant signed the funeral bill and everyone was in agreement. They state that they provided the family with an affordable, nice funeral and they are sorry the family is upset.

Complaint History: 2006 – \$750 civil penalty (family not given GPL, not responding to complaint)

Recommendation: Dismiss

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

26. Case No.: L06-FUN-RBS-2006023321

A former manager of the FH called the funeral staff and alleged that unlicensed activity was occurring at his former place of business. He stated that a document was brought to him to sign but he refused because he believed that an unlicensed person had taken care of the matter.

A board inspector went to the FH and did not uncover any unlicensed activity.

The FH responds that this is a complaint of a disgruntled employee and it has no merit. The new manager responds that it is the desire of the FH to comply with the law.

Complaint History: 2005 - \$1000 civil penalty (FTC violation, invalid corporate status)

Recommendation: Dismiss

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

27. Case No.: L06-FUN-RBS-2006022391

Complaint is the result of an inspector's notice of violation which alleges: FTC violations, including a deficiency on the GPL and the CPL was not available for inspection.

FH sent in a copy of the corrected GPL. The FH states that they do not carry caskets at the FH and that is why they do not have a CPL.

Complaint History: None

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation and additionally, a Letter of Warning to Respondent regarding a Casket Price List.

Seconded by Mr. Buckner

Adopted by voice vote

28. Case No.: L06-FUN-RBS-2006026371

Complaint alleges that the FH changed ownership and did not apply for a change of ownership with the Board. The ownership was changed from a corporation to an LLC.

The FH responds that the ownership has not changed; the operating officers are the same two people. They state that the reason for the change was upon recommendation of their accountant.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. David Murphy

Adopted by voice vote

29. Case No.: L06-FUN-RBS-2006024901

Complaint is the result of an inspector's notice of violation which alleges: based on a random inspection of cremation authorizations, one file lacked the disclosure of the name, address and telephone number of the crematory used and the authorization was witnessed by an apprentice funeral director.

The FH responds that the reason the place of cremation was not indicated on the authorization is due to the fact that they were having problems with the crematory they were using and were most likely going to use another one, this was fully disclosed to the family and because of the time constraint the FH ended up using the crematory they usually use. The manager states that it was his fault for not fully completing the authorization after the decision was made, and he apologizes for his mistake. The FH states that the apprentice signed the form by error and he was helping the FD with arrangements and mistakenly signed as the FD. The manager states that the apprentice was under his supervision and this will not happen again.

Complaint History: None

Recommendation: Consent Order assessing \$250 civil penalty and authorization for a formal hearing.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

30. Case No.: L06-FUN-RBS-2006022761

Complaint is the result of an inspector's notice of violation which alleges: When the inspector went into the preparation room he saw a person cleaning up. When the inspector asked him if he had embalmed the body he admitted that he embalmed the body in the preparation room. This person is not a licensed embalmer in the State of Tennessee.

The unlicensed person responds that this was a misunderstanding with the inspector. He responds that he did not embalm the body the morning of the inspection. He states that he had just finished putting cosmetics on the body

when the inspector came into the preparation room. He states that when the inspector asked if he had embalmed the body, he replied yes because the night before he had assisted the manager, a licensed embalmer, with the body. He states that the inspector did not ask him when he had embalmed the body and this is where the misunderstanding arose. He states that he has grown up in the business (sixth generation FD). He knows the law and did not break the law in question. He states he is licensed in another state as a FD and embalmer. He states that he hopes the Board will see that this was a misunderstanding.

Complaint History: None

Recommendation: Letter of Warning

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

31. Case No.: L06-FUN-RBS-2006017731

Complaint was presented to the Board in June. The Board authorized a \$2,000.00 civil penalty. I am representing it to you based on a lack of evidence pertaining to unlicensed embalming. The complaint was the result of an inspector's notice of violation which alleges: FTC violations, including deficiencies on the GPL, and CPL. A copy of the crematory license and last inspection report that the FH uses was not available for inspection. Copies of three FD licenses were not available for inspection. A copy of an embalmer's license was not available for inspection. The inspector also noted that when he went to inspect the preparation room he saw a person cleaning up. This person admitted to the inspector that they had just completed embalming the body in the preparation room. This person is not a licensed embalmer in the State of Tennessee.

FH responds that a copy of the crematory license, last inspection report, FD licenses, embalmer's license, were all available for inspection and they had corrected the price lists. The FH responds that the unlicensed person did not embalm a body but that he had just finished putting cosmetics on the body and he never told the inspector that he embalmed the body because the body was embalmed the night before by the manager. The FH states that the unlicensed person is a licensed FD and embalmer in another state.

Complaint History: 2005 - \$500 civil penalty (FTC violation)

Recommendation: Consent Order assessing \$500 civil penalty and authorization for a formal hearing and a Letter of Warning discussing unlicensed activity.

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Buckner

Adopted by voice vote

32. 33. & 34. Case No.: L06-FUN-RBS-2006027661, 2006027641, 2006027621

Complaint is the result of an inspector's notice of violation which alleges: FTC violations, including deficiencies on the GPL and CPL. The GPL has a charge of \$4,000.00 which is a "policy servicing fee for total protection agreement."

The FHs sent in a copy of the corrected GPL and CPL. The FHs state that all other charges being assessed for the services they provide are in compliance with TN law.

Complaint History:

2006027661 – 2002 - civil penalty (unlicensed person signing contracts); 2005 - \$1000 civil penalty (it took one year to get vase and monument inscribed)

2006027641 – 2003 – C & D unlicensed activity

2006027621 – LOC cremains not handled properly; 2005 - \$500 civil penalty (cremation authorization did not have name of crematory used, cremains did not have permanent ID tag)

Recommendation: Authorization for a Formal Hearing

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

35. Case No.: L06-FUN-RBS-2006017471

Complaint is the result of a civil lawsuit being filed against the Respondent FH. The complainant alleges that her deceased husband's casket was leaking and it was apparent from the outside of the mausoleum. She contacted the FH to tell them that a foul smell was coming from the mausoleum. The complainant alleges that the FH brought in a specialist to remove the casket from the crypt and that when they transferred his body to another casket they buried the old casket in a field without marking the grave. She alleges that part of her husband is buried in weeds and she would like this spot marked. Complainant alleges that the FH was negligent and unprofessional in the entombment and disentombment of her husband.

The FH denies that it was negligent or unprofessional in the entombment or disentombment of the complainant's husband. They state that the minute the complainant called them to complain of an odor they immediately took action and

once they figured out the casket was leaking they contacted a specialist from Pennsylvania to help with the cleanup and disinterment of the body. They state that the body was transferred to another casket and they deny complainants allegations that part of the body remained in the old casket. The FH states that it has conducted itself in the highest professional manner and has gone to great lengths to ensure that all matters are performed with dignity and respect.

Complaint History: None

Recommendation: Litigation Monitor Consent Order

A motion was made by Mr. David Murphy to accept Counsel's recommendation.

Seconded by Ms. Vincent

Adopted by voice vote

36. 37. & 38. Case No.: L06-FUN-RBS-2005043271, 2005043261, 2005043281

Complaints are the result of an administrative error. The complaints were opened as funeral and burial complaints. The complaints pertain to burial services and therefore the funeral complaints need to be closed.

Recommendation: Close

A motion was made by Ms. Vincent to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

39. Case No.: L06-FUN-RBS-2006013531 [Tabled]

Anonymous complainant alleges that five people were fired from this FH because a non-licensed person was doing the embalming job of aspirating bodies.

FH's corporate counsel responds that it received a letter from an attorney alleging that an unlicensed person was performing embalming at the FH. The FH immediately performed an investigation by interviewing former and current employees. The investigation determined that a funeral director apprentice may have been involved and he told the investigators in the presence of his attorney that he aspirated 22 bodies in a four month period in 2004. The FH responds that it interviewed all persons named by the apprentice who would have knowledge of this. All of the people interviewed denied that they had knowledge of this allegation. The apprentice's supervisor does admit that he saw the apprentice begin to aspirate a body but that he immediately stopped him and told him that he was not allowed to aspirate as an apprentice. The FH has reviewed

the files along with the apprentice log of the apprentice. The apprentice was terminated at the FH and he has informed the company that he is now employed in a completely unrelated line of business and has no intention of returning to a FH. The FH states that it has instructed all of its managers to make sure all apprentices understand their role in the FHs.

Complaint History: LOW – unfair and rude treatment of individual.

Recommendation: Letter of Warning discussing unlicensed conduct.

A motion was made by Mr. Foster to accept Counsel's recommendation.

Seconded by Mr. Steve Murphy

Adopted by voice vote

40. Case No.: L06-FUN-RBS-2006012431 [Tabled]

Complainant FH alleges that an employee apprentice funeral director may have aspirated 22 bodies without their knowledge or permission. Through an internal investigation the FH has interviewed respondent and he claimed during that interview that he aspirated bodies from September 2004 through December 2004. He stated that he stopped when his supervisor saw him aspirating and told him to stop.

Complaint History: None

Recommendation: Letter of Warning discussing unlicensed conduct.

A motion was made by Mr. Steve Murphy to accept Counsel's recommendation.

Seconded by Mr. Foster

Adopted by voice vote

ArcMesa Educators – Review Approval as CE Provider

Mr. Ken Meyer, Executive Vice President of ArcMesa Educators in Eatontown, New Jersey, appeared before the Board to answer questions concerning the actions of Erin Casey, an employee of ArcMesa Educators.

On Thursday, June 29, 2006, the Board office received a call from Todd Mowl of Elite CME, Inc. informing them that Ms. Casey had been going on Elite's website, downloading and completing courses for licensees. This all occurred because the Board office denied approval of ArcMesa's continuing education programs because they did not meet the requirements of Tennessee Code Annotated § 62-5-605(a)(1) which states: (a) Any organization or individual wishing to hold

seminars with employees or other licensees shall: (1) submit to the board no less than sixty (60) days from the planned event, an application supplied by the board outlining the event, speaker and course description; provided, that for good cause, an amendment to the application may be submitted to the board no less than thirty (30) days from the planned event.

The Board office denied the application for approval because the application was not turned in on time. Based on these allegations, it appeared as though Erin Casey, ArcMesa's Director of CE/CME, had been fraudulently completing continuing education for licensees who were denied credit by the Board.

Tennessee Code Annotated § 62-5-611 (Withdraw of approval for program) states: Approval of any continuing education program may be withdrawn by the board if: (1) The establishment or conduct of a program violates, or fails to meet the requirements of, the provisions of this chapter or other applicable laws; or (2) The information contained in the application for approval is materially inaccurate or misleading.

A motion was made by Mr. Steve Murphy to suspend ArcMesa Educators for a period of one (1) year, effective immediately (August 8, 2006), as a provider of continuing education courses for Tennessee licensees.

The motion was seconded by Mr. Buckner

Adopted by voice vote

ADMINISTRATIVE MATTERS: ROBERT B. GRIBBLE, EXECUTIVE DIRECTOR

Report of Individual Licenses Issued –

Jonathan Scott Keene
Nashville, TN

Funeral Director/Embalmer
Issued: June 28, 2006

Heath Barnette Lawhon
New Tazewell, TN

Funeral Director/Embalmer
Issued: July 20, 2006

David H. McCarter
Sevierville, TN

Funeral Director
Issued: July 22, 2006

Catherine Hope Atchley
Sevierville, TN

Funeral Director
Issued: July 22, 2006

Disciplinary Action Report –

The Board has previously authorized these consent orders and civil penalties. The Consent Orders have been signed and the civil penalties paid by the respondents. The Executive Director requests the Board's acceptance of the following consent orders.

Complaint Nos. 2006000491 and 2006000501

Violation: Immoral or unprofessional conduct – possession of drug paraphernalia and addicted to a habit forming drug

Action: Suspension of licenses as a Funeral Director and Embalmer for one year

Complaint No. 2005030811

Violation: Several FTC price violations

Action: \$250 Civil Penalty

Complaint No. 2005013711

Violation: Immoral or unprofessional conduct – extremely late filing of death certificates

Action: \$250 Civil Penalty

Complaint No. 2005032641

Violation: Several FTC price violations

Action: \$1000 Civil Penalty

Complaint No. 2006001151

Violation: Several FTC price violations

Action: \$500 Civil Penalty

Complaint No. 2006016501

Violation: Several FTC price violations

Action: \$250 Civil Penalty

Complaint No. 2006006061

Violation: Several FTC price violations, crematory authorization form did not contain required data, and crematory license that funeral home uses was not available

Action: \$500 Civil Penalty

Complaint No. 2006014111

Violation: Price lists, current license of establishment, funeral director and embalmer and crematory license that funeral home uses not available for inspection and no permanent ID devices

Action: \$1250 Civil Penalty

Complaint No. 2006016081

Violation: Several FTC price violations and the manager's license as a funeral director expired at time of inspection

Action: \$500 Civil Penalty

Complaint No. 2006016391

Violation: Several FTC price violations, funeral contracts missing and copy of crematory license and latest crematory inspection report not available

Action: \$1000 Civil Penalty

Complaint No. 2005045291

Violation: Several FTC price violations, current license of establishment, funeral director and embalmer not available, crematory license and latest crematory inspection report not available and no permanent ID device

Action: \$1000 Civil Penalty

Complaint No. 2006014101

Violation: FTC price violations

Action: \$250 Civil Penalty

A motion was made by Mr. Steve Murphy to accept the Consent Orders.

Seconded by Mr. David Murphy

Adopted by voice vote

Open Complaint Report –

As of August 4, 2006, there were 96 open complaints.

Proposed Legislation for 2007 –

A letter from the Assistant Commissioner of the Department of Commerce and Insurance was presented to the Board regarding Legislative Recommendation Process.

Public Notice Guidelines for Board Meetings –

A letter from the Assistant Commissioner of the Department of Commerce and Insurance and the Chief Counsel for Regulatory Boards was presented to the Board concerning Public Notice Guidelines for Board and Commission Meetings.

APPROVAL OF ESTABLISHMENT LICENSES – BOARD MEMBERS: Upon motion, based upon the application records, the following applicants were approved for licensure.

**Anderson – Upper Cumberland Funeral Home
Gainesboro, TN**

**Name Change
Ownership: LLC**

**Family Mortuary, Inc.
Chattanooga, TN**

**Location Change
Ownership: Corporation**

**Cumberland Family Services, Inc.
Algood, TN**

**New Establishment
Ownership: Corporation**

ADJOURN:

A motion was made by Mr. Buckner to adjourn.

Seconded by Mr. Foster

Adopted by voice vote

There being no further business, the meeting was adjourned at 11:40 A.M.

Respectfully submitted,

Robert B. Gribble

Robert B. Gribble, CFSP
Executive Director